

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MATTEL, INC.,

Plaintiff,

vs.

THE ENTITIES DOING BUSINESS
AS GOODMENOW AT THE URL
GOODMENOW.COM, ET AL.,

Defendants.

Civil Action No.: 1:20-cv-11075-NRB

**SECOND DECLARATION OF XIN
CHENG**

I, Xin Cheng, do hereby depose and state:

1. My name is Xin Cheng, and I am over the age of eighteen.
2. I am the CEO of Yokawa Network Limited (“Yokawa”), a business entity duly incorporated under the laws of Hong Kong, SAR, China.
3. Yokawa started selling various dolls for the 2020 holiday season (the “Dolls”), including the “Day of the Dead” doll at issue in this case. Yokawa started selling the “Day of the Dead” doll on or about October 21, 2020. Yokawa has been diligently working to ascertain the exact number of the “Day of the Dead” dolls at issue sold by Yokawa, but the process is still ongoing. Given the time sensitivity of this Declaration, I am providing an overly inclusive number for all Dolls sold by Yokawa during the relevant period.
4. Yokawa will confirm the exact number of the “Day of the Dead” dolls as soon as possible.
5. On or about November 3, 2020, Yokawa ceased marketing the Day of the Dead doll. Yokawa chose to stop selling the Day of the Dead doll in early November 2020.

6. Yokawa has not sold the “Day of the Dead” doll since November 2020, except for customer returns and exchanges.
7. During the period of October and November 2020, Yokawa fulfilled about 7,521 purchase orders of the Dolls in the United States through the three websites that have been sued in this case, for total revenues of about \$433,798.40. Through those three websites, Yokawa sold only about 273 purchase orders of the Dolls in New York State.
8. Yokawa estimates that it had about a 10% profit margin on the sale of each Doll, resulting in total net profits of about \$43,379.84 on sales of the Dolls through the three websites at issue.
9. Yokawa also fulfilled about 6,047 purchase orders of Dolls through other websites operated by Yokawa that have not been named in this case.
10. Yokawa’s total revenue on sales of the Dolls in the United States was approximately \$783,016.70.
11. Based on its typical profit margins, Yokawa’s total gross profit on these Dolls was approximately \$78,301.67. Again, only some of the Dolls were “Day of the Dead” dolls, and Yokawa is still calculating the exact number of “Day of the Dead” dolls sold.
12. Yokawa relies on its PayPal accounts to operate its e-commerce business. The three websites at issue in this case only accept payment through PayPal.
13. Yokawa’s bank accounts are all located, and only located, in Hong Kong.
14. Yokawa’s PayPal accounts were opened through PayPal’s Hong Kong branch.
15. Yokawa maintains a high balance in its PayPal accounts for three reasons. First, Yokawa uses PayPal cash flow for some expenses and processing fees. Second, PayPal requires a small minimum reserve. Third, PayPal requires a rolling reserve
16. The total minimum reserve required by PayPal for Yokawa has been about \$143,600 and recently increased to \$1,490,878.88. These funds belong to Yokawa, but they are held as a

reserve by PayPal. PayPal does not have a "lien" or other claim to this money.

17. Yokawa pays service fees to PayPal. Yokawa is current on its payments to PayPal and has no overdue service fees owed to PayPal. Thus, Yokawa does not owe any money to PayPal and PayPal does not have a "lien" against any funds.
18. The rolling reserve held by PayPal depends on the volume of sales. It is not a fixed number. The rolling reserve is a percentage of our sales through PayPal. We are required to hold 40% of sales revenue in reserve for a period of 60 days. During that period, the money still belongs to Yokawa, but we cannot access the funds for that period of time. Once the period of time expires, we can access the funds. Before the accounts were frozen, the rolling reserve was about \$3.97 million USD, based on our sales volume. If our sales volume goes down, the rolling reserve amount goes down too. Yokawa is required to maintain a high level of rolling reserve because our continuously increasing sales volume.
19. PayPal cannot unilaterally deduct the minimum reserve, nor the rolling reserve, for purpose of resolving customer returns or chargebacks, unless our available balance with Paypal becomes insufficient, which has never occurred and will not occur in the foreseeable future. The minimum reserve and the rolling reserve funds will be transferred to Yokawa in the event that Yokawa ceases to transact business with Paypal.
20. In general, only a small amount of the available balance in our available funds with PayPal is used for customer returns or chargebacks. I estimate that about \$250,000 per 180 days from our sales proceeds is used for customer returns, chargebacks, or other reasons. There is a return and refund window of 180 days. For any outstanding customer requests for payment reversals, PayPal will withhold such sales proceeds as pending payments, which are not reflected on our PayPal statement. Such pending payments are withheld by PayPal in addition to the minimum reserve and the rolling reserve. Currently, we have about \$410,000 pending

payments withheld by PayPal. Only a portion, not all, of the pending payments will eventually be refunded to customers. In another word, we have sufficient funds to resolve outstanding request for payment reversals, without debiting the minimum reserve and the rolling reserve.

21. Based on our recent account records, the following accounts together have a total current balance of more than \$2.76 million, including about \$223,080 in “pending” funds.

- a. yokawa@126.com
- b. yowords@163.com
- c. yocute@126.com
- d. yoepoch@sina.com
- e. yohoke@sina.com
- f. yoloya@sina.com
- g. yostep@163.com

22. PayPal explains the reserve process on its website. Attached is a copy of information from PayPal’s website, accessed at <https://www.paypal.com/us/brc/article/account-reserves>.

23. I am not aware of any “lien” asserted by PayPal against the funds in Yokawa’s accounts. Yokawa does not owe any debt to PayPal. Accordingly, PayPal can’t take funds out of Yokawa’s accounts to be paid to PayPal.

24. The freezing of Yokawa’s PayPal accounts has caused enormous losses to Yokawa.

25. The following is an estimated breakdown of losses caused by this shutdown. Yokawa reserves the right to modify these numbers upon additional review of its financial records, but these are a good-faith calculation based on the current available data:

- a. Loss of daily revenue from first-time customers via online marketing channels:
approximately \$300,000 per day (estimated \$27,000,000 in total revenue from first-

time buyers in Q1/2021 based on past data and sales cycles, the equivalent of loss of gross profit at the rate of approximately \$30,000 per day);

- b. Loss of daily revenue from direct return customers: approximately \$63,000 per day (approximately 1,000,000 total purchases in 2020, with estimated 50% return-customer-purchase rate during 2021, for 500,000 total repurchase orders in 2021, or approximately 1,400 purchase orders per day in 2021, many of which will now be lost, assuming average product cost of \$45, and a higher profit margin at 40%-55% due to cost savings on marketing channels, the equivalent of loss of gross profit at the rate of approximately \$30,000 per day);
- c. Advertising recovery cost: approximately \$1,000,000 (cost to restart and optimize advertising from cold start, after shutdown);
- d. Inventory loss: approximately \$750,000 (some stock items, especially off-season items, will not be saleable at full price and will need to be heavily discounted);
- e. Logistics contract liquidated damages: approximately \$2,000 per day;
- f. Warehouse contract liabilities, including loss of security deposit: approximately \$150,000;
- g. Advertising contract liquidated damages: approximately \$5,000 per day;
- h. Employee turnover damage: estimated \$4,000,000 if shutdown continues (Yokawa has approximately 560 employees, with 100 employees being subject to immediate lay off or resignation, resulting in estimated \$4,000,000 replacement expense for any employees who do not return after the shutdown)
- i. Partner credit damage: difficult to calculate but substantial (Yokawa has very good relationships with Google, Facebook, PayPal, etc., and any disruption in Yokawa's ability to pay those partners will damage Yokawa's standing and credit);

- j. Reputation damage: difficult to calculate but substantial;
- k. Loss of access to capital market: subtraction of business valuation, estimated between \$250 million - \$400 million, due to loss of business revenue.

26. The continued attachment of all Yokawa's PayPal accounts will cause the company significant and irreparable harm in the form of serious reputational harm with customers, employees, and business partners.

27. I declare that the foregoing is true and correct under penalty of perjury.

Dated: this 20th day of January, 2021.

Hong Kong, SAR, China

XIN CHENG

XIN CHENG

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An account reserve is an amount of money that's put on hold in your PayPal account to help cover potential financial risk, such as payment reversals you may receive like chargebacks and claims.

PayPal uses three types of reserves: rolling reserves, minimum reserves, and jumpstart reserves

1. A **rolling reserve** is a reserve where we hold a percentage of each transaction you receive each day, and then release it later on a scheduled basis. This is the most common type of reserve.
 - For example, your reserve could be set at 10% and held for a 90-day rolling period – meaning 10% of the money you receive on day 1 is held and then released on day 91, 10% of the money you receive on day 2 is held until day 92, etc.
2. A **minimum reserve** is a specific minimum amount of money we hold in your reserve balance. We either take the minimum reserve as a percentage of money held until it reaches a certain amount, or a one-time amount.
 - For example, 5% of your daily transaction volume is held until a balance of \$5,000 is reached, or a one-time amount of \$5,000 is taken from the available balance and deposited in the reserve balance.
3. A **jumpstart reserve** is when we hold funds from your available balance immediately.
 - For example, if we make the determination to keep a \$10K jumpstart reserve and there is \$20K in the PayPal account balance, we move \$10K to reserves straight away.

We may also use a combination of reserve types on your account.

What type of reserve will my account have?

You can view details of reserves on your account when you log into your PayPal Business account and view the balance 'on hold'. You'll be able to see how much money is in reserve, and when we plan to release your funds.

How PayPal determines a reserve.

A reserve can be placed on your account for a number of reasons and is set on a case-by-case basis. PayPal considers a list of factors to determine this including:

- Your processing history with PayPal and other providers
- Whether your industry has a higher likelihood of chargebacks or refunds
- Whether your account has an elevated number of customer claims and disputes
- Your business and/or personal credit history
- Whether you are selling products or services in advance (preselling orders).
- Your delivery time frames – whether there are extended delivery timeframes

You can access the **PayPal User Agreement**

(<https://www.paypal.com/us/webapps/mpp/ua/useragreement-full>) for a full list.

When will I get my money?

It depends on the type of reserve you have. Once a reserve is placed, you'll receive a communication outlining the terms of your reserve, and you can also find the terms in your account.

If you have a rolling reserve, we'll release funds after a certain period of time. For example, if you have a 90 day rolling reserve, funds from Day 1 sales will be available on Day 91. We release funds at the time of the original payment. So, if a payment was received, and held, at 9am on Day 1, it will be released at 9am on Day 91.

Minimum reserves are reviewed within every 180 days. PayPal proactively reviews reserves and based on improvements to your business performance, we may adjust or remove the reserves.

How often PayPal evaluates reserves.

PayPal will periodically review your account within every 180 days to determine whether we need to adjust the reserve placement and amount. Reserves may be eligible for the reduction or removal with positive changes to key areas such as performance, industry, claims reduction, etc.

How to help avoid having a reserve put on your account.

Reserves may be a necessity throughout your relationship with PayPal. Preventing reserves isn't always possible, and depending on your industry and your credit history, you might never be able to fully remove a reserve from your account.

However, you can reduce the likelihood of having a reserve placed on your account by following seller best practices.

Seller best practices.

Some best practices to follow are:

- Ship promptly and give your customers valid tracking information through PayPal, so they can keep tabs on their purchases and know when to expect delivery
- Communicate early and often with your buyers and let them know about any changes, delays, or other important information

- Monitor your buyer complaint rates regularly and try to keep complaint rates below 1% of your sales.
- Avoid long refund times, which can lead to complaints from unsatisfied customers

A customer who receives prompt service, accurate order fulfillment, and speedy billing is a customer who will be less likely to file complaints or make returns in the future – and more likely to buy from you again.

You can also access additional information on account reserves by reviewing our FAQs at the bottom of this page.

The contents of this site are provided for informational purposes only. You should always obtain independent, professional accounting, financial, and legal advice before making any business decision.

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Frequently asked questions.

What are PayPal Here™ Reserves? 

Why is my money being held in reserve? 

What does the "Collateral Summary" of the settlement file represent? 

Why didn't the charity I intended to benefit receive the donation I made through a PayPal Giving Fund program?



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